

CONFERENCE COMMITTEE REPORT DIGEST FOR EHB 1300

Citations Affected: IC 12-26-15-1; IC 35-36-2-2; IC 35-36-2-4; IC 35-36-3.

Synopsis: Insanity defense. Conference committee report for EHB 1300. Requires the superintendent of certain facilities or an attending physician to file periodic reports with the court concerning a committed individual who was found not responsible for a crime by reason of insanity and is committed to a mental health facility, and to notify the court and certain individuals as soon as practicable if the committed individual escapes, and at least 10 days before the committed individual is: (1) transferred; (2) discharged; or (3) allowed outside the facility without supervision. Provides that a defendant who interposes a defense of insanity may not introduce evidence from a medical witness with whom the defendant cooperated unless: (1) after being ordered to do so by the court, the defendant cooperates with medical witnesses appointed by the court; or (2) the defendant shows by a preponderance of the evidence that the defendant's failure to cooperate with medical witnesses appointed by the court was caused by the defendant's mental illness. Provides for the provision of competency restoration services by the division of mental health and addiction or by a third party. **(This conference committee report removes language requiring notice to be given to a prosecuting attorney or another person designated by the court when a defendant who was found not responsible for a crime by reason of insanity: (1) is allowed outside the facility while not restrained and in custody; (2) is given a new security classification; (3) is transferred to another facility; (4) is discharged; or (5) escapes.)**

Effective: July 1, 2004.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed Senate Amendments to Engrossed House Bill No. 1300 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 12-26-7-2 IS AMENDED TO READ AS FOLLOWS
- 3 [EFFECTIVE JULY 1, 2004]: Sec. 2. (a) This section does not apply
- 4 to the commitment of an individual if the individual has previously been
- 5 committed under IC 12-26-6.
- 6 (b) A proceeding for the commitment of an individual who appears
- 7 to be suffering from a chronic mental illness may be begun by filing
- 8 with a court having jurisdiction a written petition by any of the
- 9 following:
- 10 (1) A health officer.
- 11 (2) A police officer.
- 12 (3) A friend of the individual.
- 13 (4) A relative of the individual.
- 14 (5) The spouse of the individual.
- 15 (6) A guardian of the individual.
- 16 (7) The superintendent of a facility where the individual is present.
- 17 (8) A prosecuting attorney in accordance with IC 35-36-2-4.
- 18 (9) A prosecuting attorney or the attorney for a county office if
- 19 civil commitment proceedings are initiated under IC 31-34-19-3 or
- 20 IC 31-37-18-3.
- 21 **(10) A third party that contracts with the division of mental**

health and addiction to provide competency restoration services to a defendant under IC 35-36-3-3 or IC 35-36-3-4.

SECTION 2. IC 12-26-15-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. (a) At least annually, and more often if directed by the court, the superintendent of the facility or the attending physician including the superintendent or attending physician of an outpatient therapy program, shall file with the court a review of the individual's care and treatment. The review must contain a statement of the following:

- (1) The mental condition of the individual.
- (2) Whether the individual is dangerous or gravely disabled.
- (3) Whether the individual:
 - (A) needs to remain in the facility; or
 - (B) may be cared for under a guardianship.

(b) If the court has entered an order under IC 12-26-12-1, the superintendent or the attending physician shall give notice of the review to the petitioner in the individual's commitment proceeding and other persons that were designated by the court under IC 12-26-12-1 **or as provided in this section.**

(c) **If an individual has been committed under IC 35-36-2-4, the superintendent of the facility or the attending physician shall:**

(1) file with the court the report described in subsection (a) every six (6) months, or more often if directed by the court; and

(2) notify the court, the petitioner, and any other person or persons designated by the court under this section:

(A) at least ten (10) days before, or as soon as practicable in case of an emergency, when:

(i) the committed individual is allowed outside the facility or the grounds of the facility not under custodial supervision;

(ii) the committed individual is transferred to another facility and the location of that facility; or

(iii) the committed individual is discharged or the individual's commitment is otherwise terminated; and

(B) as soon as practicable if the committed individual escapes.

(d) **The court may designate as a person or persons to receive the notices provided in this section a person or persons who suffered harm as the result of a crime for which the committed individual was on trial.**

(e) **The court may designate as a person or persons to receive the notices provided in this section:**

(1) an individual or individuals described in subsection (d); or

(2) a designated representative if the person or persons described in subsection (d) are incompetent, deceased, less than eighteen (18) years of age, or otherwise incapable of receiving or understanding a notice provided for in this

1 **section.**

2 **(f) A commitment order issued by a court under IC 35-36-2-4**
 3 **and this article must include the following:**

4 **(1) The mailing address, electronic mail address, facsimile**
 5 **number, and telephone number of the following:**

6 **(A) The petitioner who filed the petition under IC 35-36-2-4.**

7 **(B) Any other person designated by the court.**

8 **(2) The notice requirements set forth in this section.**

9 SECTION 3. IC 35-36-2-2 IS AMENDED TO READ AS FOLLOWS
 10 [EFFECTIVE JULY 1, 2004]: Sec. 2. **(a)** At the trial of a criminal case
 11 in which the defendant intends to interpose the defense of insanity,
 12 evidence may be introduced to prove the defendant's sanity or insanity
 13 at the time at which the defendant is alleged to have committed the
 14 offense charged in the indictment or information.

15 **(b)** When notice of an insanity defense is filed, the court shall appoint
 16 two (2) or three (3) competent disinterested psychiatrists, psychologists
 17 endorsed by the state psychology board as health service providers in
 18 psychology, or physicians, at least one (1) of whom must be a
 19 psychiatrist, to examine the defendant and to testify at the trial. This
 20 testimony shall follow the presentation of the evidence for the
 21 prosecution and for the defense, including testimony of any medical
 22 experts employed by the state or by the defense.

23 **(c) If a defendant does not adequately communicate, participate,**
 24 **and cooperate with the medical witnesses appointed by the court,**
 25 **after being ordered to do so by the court, the defendant may not**
 26 **present as evidence the testimony of any other medical witness:**

27 **(1) with whom the defendant adequately communicated,**
 28 **participated, and cooperated; and**

29 **(2) whose opinion is based upon examinations of the**
 30 **defendant;**

31 **unless the defendant shows by a preponderance of the evidence**
 32 **that the defendant's failure to communicate, participate, or**
 33 **cooperate with the medical witnesses appointed by the court was**
 34 **caused by the defendant's mental illness.**

35 **(d)** The medical witnesses appointed by the court may be
 36 cross-examined by both the prosecution and the defense, and each side
 37 may introduce evidence in rebuttal to the testimony of such a medical
 38 witness.

39 SECTION 4. IC 35-36-2-4 IS AMENDED TO READ AS FOLLOWS
 40 [EFFECTIVE JULY 1, 2004]: Sec. 4. **(a)** Whenever a defendant is
 41 found not responsible by reason of insanity at the time of the crime, the
 42 prosecuting attorney shall file a written petition with the court under
 43 IC 12-26-6-2(a)(3) or under IC 12-26-7. If a petition is filed under
 44 IC 12-26-6-2(a)(3), the court shall hold a commitment hearing under
 45 IC 12-26-6. If a petition is filed under IC 12-26-7, the court shall hold
 46 a commitment hearing under IC 12-26-7.

47 **(b)** The hearing shall be conducted at the earliest opportunity after the
 48 finding of not responsible by reason of insanity at the time of the crime,

1 and the defendant shall be detained in custody until the completion of
 2 the hearing. The court may take judicial notice of evidence introduced
 3 during the trial of the defendant and may call the physicians appointed
 4 by the court to testify concerning whether the defendant is currently
 5 mentally ill and dangerous or currently mentally ill and gravely disabled,
 6 as those terms are defined by IC 12-7-2-96 and ~~IC 12-7-2-130(a)(1).~~
 7 **IC 12-7-2-130(1).** The court may subpoena any other persons with
 8 knowledge concerning the issues presented at the hearing.

9 (c) The defendant has all the rights provided by the provisions of
 10 IC 12-26 under which the petition against the defendant was filed. The
 11 prosecuting attorney may cross-examine the witnesses and present
 12 relevant evidence concerning the issues presented at the hearing.

13 (d) **If a court orders an individual to be committed under**
 14 **IC 12-26-6 or IC 12-26-7 following a verdict of not responsible by**
 15 **reason of insanity at the time of the crime, the superintendent of**
 16 **the facility to which the individual is committed and the attending**
 17 **physician are subject to the requirements of IC 12-26-15-1.**

18 SECTION 5. IC 35-36-3-1, AS AMENDED BY P.L.215-2001,
 19 SECTION 109, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 20 JULY 1, 2004]: Sec. 1. (a) If at any time before the final submission of
 21 any criminal case to the court or the jury trying the case, the court has
 22 reasonable grounds for believing that the defendant lacks the ability to
 23 understand the proceedings and assist in the preparation of ~~his~~ a
 24 defense, the court shall immediately fix a time for a hearing to determine
 25 whether the defendant has that ability. The court shall appoint two (2)
 26 or three (3) competent, disinterested:

27 (1) psychiatrists; **or**

28 (2) psychologists endorsed by the Indiana state board of examiners
 29 in psychology as health service providers in psychology. ~~or~~
 30 ~~physicians;~~

31 At least one (1) of ~~whom~~ **the individuals appointed under this**
 32 **subsection** must be a psychiatrist. ~~who~~ **However, none may be an**
 33 **employee or a contractor of a state institution (as defined in**
 34 **IC 12-7-2-184).** **The individuals who are appointed** shall examine the
 35 defendant and testify at the hearing as to whether the defendant can
 36 understand the proceedings and assist in the preparation of the
 37 defendant's defense.

38 (b) At the hearing, other evidence relevant to whether the defendant
 39 has the ability to understand the proceedings and assist in the
 40 preparation of the defendant's defense may be introduced. If the court
 41 finds that the defendant has the ability to understand the proceedings
 42 and assist in the preparation of the defendant's defense, the trial shall
 43 proceed. If the court finds that the defendant lacks this ability, it shall
 44 delay or continue the trial and order the defendant committed to the
 45 division of mental health and addiction. ~~to be confined by the division~~
 46 ~~in an appropriate psychiatric institution.~~ **The division of mental health**
 47 **and addiction shall provide competency restoration services or**
 48 **enter into a contract for the provision of competency restoration**
 49 **services by a third party in the:**

- (1) location where the defendant currently resides; or
- (2) least restrictive setting appropriate to the needs of the defendant and the safety of the defendant and others.

However, if the defendant is serving an unrelated executed sentence in the department of correction at the time the defendant is committed to the division of mental health and addiction under this section, the division of mental health and addiction shall provide competency restoration services or enter into a contract for the provision of competency restoration services by a third party at a department of correction facility agreed upon by the division of mental health and addiction or the third party contractor and the department of correction.

SECTION 6. IC 35-36-3-2, AS AMENDED BY P.L.215-2001, SECTION 110, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. Whenever the defendant attains the ability to understand the proceedings and assist in the preparation of the defendant's defense:

(1) ~~the division of mental health and addiction, through the superintendent of the appropriate psychiatric institution, superintendent of the state institution (as defined in IC 12-7-2-184); or~~

(2) **if the division of mental health and addiction entered into a contract for the provision of competency restoration services, the director or medical director of the third party contractor;**

shall certify that fact to the proper court, which shall enter an order directing the sheriff to return the defendant. The court ~~may~~ **shall** enter such an order immediately after being sufficiently advised of the defendant's attainment of the ability to understand the proceedings and assist in the preparation of the defendant's defense. Upon the return to court of any defendant committed under section 1 of this chapter, the court shall hold the trial as if no delay or postponement had occurred.

SECTION 7. IC 35-36-3-3, AS AMENDED BY P.L.215-2001, SECTION 111, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. (a) Within ninety (90) days after:

(1) ~~a defendant's admittance to a psychiatric institution, the superintendent of the psychiatric institution admission to a state institution (as defined in IC 12-7-2-184); or~~

(2) **the initiation of competency restoration services to a defendant by a third party contractor;**

the superintendent of the state institution (as defined in IC 12-7-2-184) or the director or medical director of the third party contractor, if the division of mental health and addiction has entered into a contract for the provision of competency restoration services by a third party, shall certify to the proper court whether the defendant has a substantial probability of attaining the ability to understand the proceedings and assist in the preparation of the defendant's defense within the foreseeable future.

(b) If a substantial probability does not exist, the ~~division of mental health and addiction~~ **state institution (as defined in IC 12-7-2-184) or the third party contractor** shall initiate regular commitment proceedings under IC 12-26. If a substantial probability does exist, the ~~division of mental health and addiction~~ **state institution (as defined in IC 12-7-2-184) or third party contractor** shall retain the defendant:

(1) until the defendant attains the ability to understand the proceedings and assist in the preparation of the defendant's defense and is returned to the proper court for trial; or

(2) for six (6) months from the date of the:

(A) defendant's ~~admittance~~ **admission to a state institution (as defined in IC 12-7-2-184); or**

(B) **initiation of competency restoration services by a third party contractor;**

whichever first occurs.

SECTION 8. IC 35-36-3-4, AS AMENDED BY P.L.215-2001, SECTION 112, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 4. If a defendant who was found under section 3 of this chapter to have had a substantial probability of attaining the ability to understand the proceedings and assist in the preparation of the defendant's defense has not attained that ability within six (6) months after the date of the:

(1) defendant's ~~admittance to a psychiatric institution; the division of mental health and addiction~~ **admission to a state institution (as defined in IC 12-7-2-184); or**

(2) **initiation of competency restoration services by a third party contractor;**

the state institution (as defined in IC 12-7-2-184) or the third party contractor, if the division of mental health and addiction has entered into a contract for the provision of competency restoration services by a third party, shall institute regular commitment proceedings under IC 12-26.

(Reference is to EHB 1300 as reprinted February 25, 2004.)

Conference Committee Report
on
Engrossed House Bill 1300

Signed by:

Representative Bottorff
Chairperson

Senator Long

Representative Thomas

Senator Broden

House Conferees

Senate Conferees